



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201029023

APR 26 2010

Uniform Issue List: 408.03-00

SEIT:EP:PL:TY

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A	= XXXXXXXXXXXXXXX
Taxpayer B	= XXXXXXXXXXXXXXX
Individual J	= XXXXXXXXXXXXXXX
IRA W	= XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
IRA Y	= XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
IRA Z	= XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Financial Institution A	= XXXXXXXXXXXXXXX
Company S	= XXXXXXXXXXXXXXX
Company T	= XXXXXXXXXXXXXXX
Company L	= XXXXXXXXXXXXXXX
Amount M	= XXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Amount N = XXXXXXXXXXXXXXXX  
Date 1 = XXXXXXXXXXXXXXXX  
Date 2 = XXXXXXXXXXXXXXXX  
Date 3 = XXXXXXXXXXXXXXXX  
Date 4 = XXXXXXXXXXXXXXXX  
Date 5 = XXXXXXXXXXXXXXXX  
Date 6 = XXXXXXXXXXXXXXXX  
Period 1 = XXXXXXXXXXXXXXXX  
Period 2 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXX:

This is in response to your ruling request dated June 2, 2009, as supplemented by correspondence dated August 6, 2009, and September 1, 2009, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 68, represents that he received a distribution of Amount M from IRA W; and Taxpayer B, age 63, represents that she received a distribution of Amount N from IRA X maintained by Financial Institution A. Taxpayer A and Taxpayer B (Taxpayers) assert that they failed to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code due to an error by Financial Institution A.

The Taxpayers represent that, as part of their investments held in their respective Individual Retirement Arrangements (IRAs), IRA W and IRA X, they held a membership interest in Company S which is evidenced by Certificates of Limited Liability Company Ownership. Company S is a closely held limited liability company. All assets held by Company S are illiquid, and are comprised of commercial and residential real property. The Taxpayers represent further that, on Date 1, Financial Institution A, the trustee that held the investment, resigned

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

and sent a letter to the Taxpayers informing them of the following: (1) its resignation effective Date 2, (2) the 60-day rollover requirement, and (3) that a new trustee was needed to hold the investment. The letter also informed the Taxpayers that if the proper paperwork was not received, Financial Institution A would issue 1099-Rs, indicating a taxable distribution for the value of the investment.

The Taxpayers investment advisor, Individual J, prepared the paperwork to open new IRA accounts with a successor custodian, Company T, and sent it to the Taxpayers. The paperwork instructed them to complete the paperwork for new accounts to be established, and to wait until they received assignment forms from Financial Institution A to accompany the new account forms. On three separate occasions during Period 1, Individual J contacted Financial Institution A by phone, requesting confirmation that the assignment forms be prepared and sent out, timely. On Date 3, Individual J sent the Company T IRA applications to the Taxpayers for signature and instructed them to forward the applications to Company T once the assignment forms had been received from Financial Institution A. During Period 2, Individual J, contacted Financial Institution A by phone again, requesting confirmation that the assignment forms be prepared and sent to the Taxpayers. Despite the requests, Financial Institution A did not send out the forms, timely. On Date 4, the Taxpayers forwarded the IRA applications to Company T without the assignment forms. Finally, on Date 5, Financial Institution A delivered the assignment forms after the 60-day rollover period had expired. Subsequently, on Date 6, IRA Y and IRA Z were established.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of an investment interest of Amount M from IRA W and an investment interest of Amount N from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any the time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A and Taxpayer B are consistent with their assertion that the failure to roll over their respective distributions within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to an error by Financial Institution A.

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount M from IRA W and Amount N from IRA X. The Taxpayers are granted a period of 60 days from the issuance of this ruling letter to transfer the investment interests of Amount M and Amount N to IRAs Y and Z, respectively.

Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, the contribution of Amount M and Amount N to IRA Y and IRA Z, respectively will be considered valid rollover contributions within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX, ID Number XXXXXXXXX at XXXXXXXXX. Please address all correspondence to

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose